No.....

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1944

THAD BENSON CARTER,

Petitioner,

vs.

GEORGE A. KUBLER,

Respondent.

I. THE PETITION FOR REHEARING

The Petition for Rehearing is shown at R. 40-48, inclusive. Such pleading does not present any question which was not judicially determined by the Supreme Court of the United States and reported in 320 U. S. 243. Mr. Justice Murphey delivered the opinion of the court.

The application for rehearing was denied. R. 320 U. S. 814.

II. DECISION OF THE UNITED STATES DISTRICT COURT

After the Mandate from the Supreme Court to the United States District Court, and on December 22, 1943, counsel for Thad Benson Carter presented his Petition for Rehearing, and Judge Jones of the District Court held as follows:

> "This day there being present in chambers W. T. Kimber representing the secured creditor and Elmer McClain representing the Debtor, thereupon the Debtor, by its attorney, presented for filing in Court his Petition for Rehearing in this matter, marked received December 20th, 1943.
>
> The Court having heard the statements of the attorneys and having before it the Mandate of the Supreme Court of the United States in this matter affirming the former judgment of this Court, finds that further pleadings of the nature herein presented by the Debtor are not proper or in order.
>
> The Court therefore denies the Debtor his request to file the Petition for Rehearing."
>
> R. 49.

On the same day, December 22, 1943, by Journal Entry Judge Jones held as follows:

> "On mandate to this court in this cause from the Supreme Court of the United States and on application of the secured creditor, George A. Kubler, pursuant to notice to the farm debtor, Thad Benson Carter, and to his counsel, Elmer

McClain, the court fixes the date of January 29, 1944, within which the said farm debtor may redeem the farm at the appraised value of $20,000.00 and in lieu of said Carter failing to redeem the farm within said time then that a public sale of the farm is ordered according to law." R. 49-50.

III. APPEAL TO THE UNITED STATES CIRCUIT COURT, SIXTH CIRCUIT

On appeal to the United States Circuit Court of Appeals, Sixth Circuit, that court, on November 6, 1944, entered its judgment on such appeal as follows:

"The court being unable to perceive that fundamentally any issue raised by the appeal other than or essentially different from that decided by us in *Carter v. Kubler,* 131 Fed. (2d) 222, with decision affirmed in ***Carter v. Kubler,*** 320 U. S., 238 (correct page 243) and concluding that at some point there must be an end to litigation and a recognition of final adjudication, it is the judgment of the court that the orders and decree below should be and they are in all respects AFFIRMED." R. 57.

The application for rehearing in the Circuit Court of Appeals was denied December 4, 1944. R. 58.

IV. STAY OF MANDATE BY THE U. S. CIRCUIT COURT OF APPEALS

What is not shown in the Transcript of Record is the order of the United States Circuit Court of Appeals made and entered in response to application by Thad

Benson Carter, as Appellant, for a stay of issuance of the Mandate for 60 days, pending his application to the Supreme Court of the United States for certiorari. The court, on December 12, 1944, through J. W. Menzies, Clerk, delivered the following:

> "The court today entered an order staying mandate in the above cause, pending application to the Supreme Court for certiorari, and providing that if such application is made within thirty days from this date then the mandate is further stayed until final disposition of the case in the Supreme Court."

Thereafter, and on January 10, 1945, counsel for Thad Benson Carter, by motion, asked for a further stay of the issuance of the Mandate, and on hearing, the court, on January 29, 1945, ordered the following, as certified to counsel by J. W. Menzies, Clerk:

> "The motion for a further stay of the issuance of a mandate in this cause filed January 10, 1945, is denied."

V. JUDGMENT OF THE U. S. DISTRICT COURT ON RECEIPT OF MANDATE FROM U. S. CIRCUIT COURT OF APPEALS, AND WHICH LIKEWISE IS NOT SHOWN IN TRANSCRIPT OF RECORD

> "In conformity with Rule 77(d) of the Federal Rules of Civil Procedure please take notice that the following order or judgment was entered on Feb. 3, 1945. C. B. Watkins, Clerk, U. S. District Court, Northern District of Ohio.

In the District Court of the United States
For the Northern District of Ohio
Eastern Division

In the matter of	)	
Thad Benson Carter	)	No. 33696 Bankruptcy
Farmer Debtor	)	

Entered by Jones, J.:

This cause having been removed from this court to the United States Circuit Court of Appeals for the Sixth Circuit by the appeal of the Farmer Debtor from the order entered in this cause on the 22nd day of December, 1943, and the said Circuit Court of Appeals having ordered and adjudged that the said judgment of this court in this cause be affirmed and the said Circuit Court of Appeals having remanded said cause to this court as appears by the mandate of the Circuit Court of Appeals now here,

It is ordered that the judgment of said Circuit Court of Appeals be entered as the judgment of this court and that George A. Kubler recover of said Farmer Debtor costs herein expended, taxed at $....., and have execution therefor."

It is submitted that the Petitioner's application for a writ of certiorari on the 3rd day of March, A. D. 1945, was not taken in compliance with the order of the United States Circuit Court of Appeals.

VI. REHEARING ON ISSUE JUDICIALLY DETERMINED

A reference to the claims asserted in the Petition for Rehearing, when stripped of its evidentiary matter, shows that the pleader attempts to raise the same general

questions which were urged and judicially determined in the United States District Court, the United States Circuit Court of Appeals, and in the Supreme Court of the United States, all pertaining to the question of the revaluation of the farm lands in question.

VII. AUTHORITIES

We respectfully refer to the concluding paragraph of the opinion of the Supreme Court by Mr. Justice Murphey in 320 U. S. 243.

May we also cite *30 American Jurisprudence*, Par. 165 at Page 911.

> "The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate, the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. The doctrine of res judicata not only puts an end to strife, but produces certainty as to individual rights and gives dignity and respect to judicial proceedings. It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence aliunde would be sufficient to overcome it; and therefore it would be useless for a party against whom it can be properly applied to adduce any such evidence, and accordingly he is estopped and precluded by law from doing so."

VIII. QUESTION OF DELAY

The real motive of the Petitioner, Thad Benson Carter, in seeking to continue the litigation by his numerous appeals from the judgments of the various courts in this controversy, and for some four years in time, does not fully appear from the record.

Throughout all such litigation, Carter has continued to reside on the farm, receiving the income therefrom, and without payment of any rental amount, and without even payment of taxes, passing all such burdens on to the Respondent, George A. Kubler, as the mortgage creditor.

We submit, therefore, that the Petitioner should not be privileged longer to continue this cause and to thus challenge and, indeed, defy the orders and judgment of the Supreme Court of the United States, the Circuit Court of Appeals, and the United States District Court.

IX. CONCLUSION

We, therefore, submit that the writ of certiorari should not issue.

Respectfully submitted,

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Akron 8, Ohio,
Attorney for Respondent,
George A. Kubler.

March 28, 1945.